

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 23-01138-mg

5 - - - - - x

6 In the Matter of:

7

8 CELSIUS NETWORK LLC,

9

10 Debtor.

11 - - - - - x

12 CELSIUS NETWORK LIMITED,

13 Plaintiff,

14 v.

15 STAKEHOUND SA,

16 Defendant.

17 - - - - - x

18

19 United States Bankruptcy Court

20 One Bowling Green

21 New York, NY 10004

22

23 September 7, 2023

24 10:02 AM

25

Page 2

1 B E F O R E :
2 HON MARTIN GLENN
3 U . S . B A N K R U P T C Y J U D G E
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5 E C R O : J O N A T H A N
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1 HEARING re Amended Motion for Relief from Automatic Stay and
2 Declaration of Secured Creditor
3 Status. (Doc## 3048, 3056, 3061, 3062, 3089, 3407, 3408,
4 3424, 3429)

5

6 HEARING re Debtor's Fourth Motion for Entry of an Order (I)
7 Extending the Debtors Exclusive Period to Solicit
8 Acceptances of a Chapter 1.1 Plan Pursuant to Section 1121
9 of the Bankruptcy Code and (II) Granting Related Relief.
10 (Doc# 3357, 3412, 3424, 3429)

11

12 HEARING re Motion for Entry of an Order (I) Approving the
13 Settlement By and Between the Debtors and Bradley Condit and
14 (II) Granting Related Relief. (Doc# 3339, 3373, 3424, 3429)

15

16 HEARING re Second Application for Interim Professional
17 Compensation of DelawareADR, LLC and Sontchi, LLC as Fee
18 Examiner for Fee Examiner Sontchi, Other Professional,
19 period: 3/1/2023 to 6/30/2023, fee:\$57,150.00, expenses:
20 \$0.0. (Doc## 3208, 3211, 3402, 3424, 3429)

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1 HEARING re Second Application for Interim Professional
2 Compensation as Attorneys for the Fee Examiner for Godfrey &
3 Kahn, S.C., Other Professional, period: 3/1/2023 to
4 6/30/2023, fee: \$563,639.00, expenses: \$643.51. (Doc##
5 3209, 3211, 3402, 3424, 3429)

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7 HEARING re Adversary Proceeding: 23-01138-mg Celsius Network
8 Limited v. StakeHound SA
9 Hybrid Pretrial conference. (Doc ## 7, 11, 31)

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25 Transcribed by: Sonya Ledanski Hyde

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16 ALSO PRESENT:

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18 PHILIPPE N. AZIMZADEH

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20 CHRIS BECIN

21 JEFFREY BERNSTEIN

22 JOHAN BRONGE

23 VITOR CUNHA

24 SANTOS CACERES

25 JOSHUA B. COLE

1 **CAMERON CREWS**
2 **TRISTAN DIAZ**
3 **SHARON M. DOW**
4 **JEFF DUPREX**
5 **JAMES ENGEL**
6 **DAVID AVERY FAHEY**
7 **CHRIS FERRARO**
8 **DEBORAH FRANKEL**
9 **REBECCA GALLAGHER**
10 **RAMON GONZALES**
11 **LUCAS J. HOLCOMB**
12 **IMMANUEL HERRMANN**
13 **JOHN HODSON**
14 **JASON IOVINE**
15 **MIKE JOHNSON**
16 **DAN KAPLAN**
17 **DAN LATONA**
18 **CATHY LAU**
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20 **JESSE LUND**
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22 **CHASE MARSH**
23 **CHRISTOPHER PAGNANELLI**
24 **SID PANDEY**
25 **MILIN PATEL**

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5 WILLIAM D. SCHROEDER
6 CHRISTOPHER S. SONTCHI
7 COURTNEY BURKS STEADMAN
8 LUCY THOMSON
9 VICTOR UBIERNA DE LAS HERAS
10 EZRA VAZQUEZ-D'AMICO
11 TONY VEJSELI
12 ZACHARY ZABIB
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17 SOMA BISWAS
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19 THOMAS HUGHES
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22 GREG KACZKOWSKI
23 DAVID KAHN
24 WENDY KANE
25 YARA KASS-GERGI

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1 P R O C E E D I N G S

2 CLERK: All right. Good morning. Starting the
3 calendar for September 7, 2023 for -- calling the calendar
4 for the following cases at 10:00 a.m. and 11:00 a.m.

5 For 10:00 a.m., number 22-10964, Celsius Network,
6 LLC. And also 23-1138, Celsius Network Limited versus
7 SteakHound SA.

8 If we could start -- I see we have counsel for
9 SteakHound. If you'd like to start with your appearance,
10 please.

11 MS. WICKOUSKI: Good morning. Stephanie Wickouski
12 from Locke Lord on behalf of SteakHound SA. I'm here with
13 my colleague, Jeffrey Kramer, and we're appearing in
14 connection with the pretrial conference set for today.

15 CLERK: All right. Thank you so much.

16 MS. WICKOUSKI: Thank you.

17 CLERK: Do we have any other counsel in the
18 courtroom that would like to make an appearance?

19 MS. JONES: Hi, Diana. Good morning. It's
20 Elizabeth Jones of Kirkland & Ellis on behalf of the
21 debtors.

22 CLERK: Good morning.

23 MS. JONES: And today, there'll also be -- they're
24 not yet here in the courtroom, but my colleague, Gabriela
25 Hensley and Patricia Loureiro.

1 CLERK: Okay. Wonderful. And are they appearing
2 in the courtroom or using Zoom?

3 MS. JONES: They'll be appearing in the courtroom.
4 They'll be here shortly, and then we may have T.J. McCarrick
5 on Zoom if needed.

6 CLERK: Okay. Thank you.

7 MS. JONES: Yeah. Thank you.

8 CLERK: Are there any additional parties in the
9 courtroom that have not given their appearance yet and would
10 like to do so?

11 All right. Are there any parties on Zoom that
12 would like to state their appearance? Yes, Katherine. I
13 see you are muted. Okay. Go ahead.

14 MS. STADLER: Thank you. Hi Katherine Stadler of
15 Godfrey & Khan appearing on behalf of the fee examiner,
16 Christopher Sontchi.

17 CLERK: All right. Thank you so much.

18 MS. STADLER: Thank you.

19 CLERK: All right. At this time, are there any
20 additional parties that are stating their appearance either
21 in the courtroom or on Zoom? Go ahead, Mr. Cole.

22 MR. COLE: Good morning. This is Joshua Cole, pro
23 se creditor. I have a motion before the Court today.

24 CLERK: Okay. Thank you.

25 MR. COLE: Thank you.

1 CLERK: All right. For now, I'll pause recording,
2 and I'll commence taking appearances in a few moments -- a
3 few minutes. Thank you.

4 Good morning again. This is the Judge's courtroom
5 deputy. If anyone is making an appearance in the courtroom,
6 please come to the middle podium and state your appearance
7 for the record. Is there anyone on Zoom that is making an
8 appearance this morning? Go ahead. Yeah, in the courtroom.
9 You can go ahead.

10 MS. JONES: Hi, Diana. It's Elizabeth Jones again
11 of Kirkland & Ellis. One of my colleagues will be sharing
12 the presentation today. He'll be through Zoom, but it's --
13 so you know when his name pops up, it's Joshua Raphael.

14 CLERK: Okay. Thank you.

15 MS. JONES: Thank you, Diana.

16 CLERK: All right. For Mr. Sontchi?

17 MR. SONTCHI: Good morning. This is Chris
18 Sontchi, the fee examiner. I'll only be appearing to the
19 extent Judge Glenn has any questions on the fee
20 applications.

21 CLERK: Thank you. Mr. McCarrick.

22 MR. MCCARRICK: Good morning. T.J. McCarrick,
23 Kirkland & Ellis on behalf of the debtors. I don't expect
24 the it'll have to speak today, but it's possible in
25 connection with the settlement approval. Thanks.

1 CLERK: All right. Thank you. Any additional
2 parties that have not given their appearance yet?

3 All right. Yes. Mr. Ferraro.

4 MR. FERRARO: Chris Ferraro with Celsius.

5 CLERK: All right. Thank you. All right. For
6 now, I'll pause the recording, and we'll take another round
7 of appearances in a few minutes. Thank you.

8 If there are any parties in the courtroom that are
9 speaking on the record this morning and have not given their
10 appearance, please go to the middle podium to do so.

11 MR. HURLEY: Good morning. Mitch Hurley with Akin
12 Gump, special litigation counsel to Celsius here for the
13 SteakHound status conference.

14 CLERK: All right. Thank you. All right. Are
15 there any parties on Zoom that are speaking on the record
16 this morning? Yes, Mr. Bernstein?

17 MR. BERNSTEIN: Yes, good morning. Just in case,
18 Jeffrey Bernstein, McElroy, Deutsch, Mulvaney & Carpenter
19 for the New Jersey Bureau of Securities. Thank you.

20 Yes, we have someone at the podium.

21 MR. KRAMER: Good morning. Jeffrey Kramer of
22 Locke Lord for the defendant, SteakHound SA in the adversary
23 proceeding.

24 CLERK: All right. Thank you.

25 MR. KRAMER: Thanks.

1 CLERK: All right. For and for the Celsius on
2 Zoom, do you have any additional conference rooms that are
3 trying to join? I just want to make sure because I have
4 some parties in the waiting room, but I can't tell if it's a
5 conference room or not.

6 MAN 1: Hello. No. This is just our viewing
7 conference room.

8 CLERK: Okay. Thank you.

9 MAN 1: Thank you.

10 CLERK: Yes. Phillip, are you stating your
11 appearance this morning?

12 MR. AZIMZADEH: Hi. I'm just -- I'm an Earn
13 creditor, and I had a question for the judge. I'm not sure
14 what the process is exactly. I don't have a lawyer right
15 now here with me.

16 CLERK: All right. So if you want to -- I don't
17 want to know what specifically you want to speak to the
18 judge about, but you can certainly file something with the
19 Court. We do not accept filings by e-mail, but you can do
20 that.

21 I mean, he is basically going to be focused on the
22 hearing today, so if it's in reference to the hearing today,
23 you can certainly raise your hand when he asks if there's
24 any parties that have anything to say regarding today's
25 hearing. But if it's not in reference to today's hearing,

1 you'll have to file something with the Court.

2 MR. AZIMZADEH: Okay. And could you remind me
3 again what that process -- you just mentioned there's an e-
4 mail I can send to or --

5 CLERK: No. We do not accept filings by e-mail,
6 so you'll have to go to the Court website, and on the home
7 page under the COVID protocol, there is a pro se filer
8 upload to upload your document, or you can come to the Court
9 and file it, or you could mail it to the Court. All of that
10 information is on the Court's website.

11 MR. AZIMZADEH: But that would be for the next
12 hearing, or do you think I could do that quickly enough that
13 I could actually ask him a question today?

14 CLERK: One second. Okay. You can go ahead and
15 give your appearance.

16 MR. FRISHBERG: Yeah. I just want to make my
17 appearance for the record. Daniel Frishberg, pro se. I
18 don't plan on speaking, but just in case.

19 CLERK: All right. Thank you. Appreciate that.

20 All right. We're resuming the recording for
21 today's hearings. For the parties that have joined using
22 Zoom, is there anyone that is stating their appearance this
23 morning and speaking on the record? If so, please use the
24 raise hand function, and state your appearance.

25 Yes, Mr. Wofford?

Page 23

1 MR. WOFFORD: Yes, hello. Good morning. Keith
2 Wofford from the firm of White & Case for the Official
3 Committee of Unsecured Creditors.

4 CLERK: Okay. Thank you. Mr. Swingle?

5 MR. SWINGLE: Yes. Adam Swingle, White & Case LLP
6 on behalf of the Committee as well.

7 CLERK: Okay. Thank you. Yes, Phillip?

8 MR. AZIMZADEH: Yes. It's Phillip Azimzadeh.
9 This is just in case. I may not say anything, but I wanted
10 to just put my name out there just in case.

11 CLERK: Okay. Thank you. Appreciate it.

12 All right. Any additional appearances in the
13 courtroom or on Zoom?

14 MR. PESCE: In the courtroom, Gregory Pesce, White
15 Case on behalf of the Official Committee of Unsecured
16 Creditors.

17 CLERK: All right. Thank you.

18 I believe we have the U.S. Trustee on the line.
19 Yeah. Sorry. You're muted.

20 MS. CORNELL: Sorry about that, Diana. Good
21 morning. It's Shara Cornell on behalf of the United States
22 Trustee.

23 CLERK: All right.

24 MS. CORNELL: Thank you.

25 CLERK: You're welcome. Any additional parties

Page 24

1 that are speaking on the record this morning? If anyone's
2 in the courtroom, please come to the middle podium to give
3 your appearance. If you're appearing using Zoom, please use
4 the raise hand function. I'll ask you to unmute and state
5 your appearance.

6 All right. I will pause the recording for now.

7 All right. Good morning again, everyone. For the
8 parties that have joined using Zoom, if anyone is speaking
9 on the record this morning and wants to state their
10 appearance, please use the raise hand function and do so.

11 Again, for any parties that have joined using
12 Zoom, if you're stating your appearance on the record,
13 please unmute your line and use the raise hand function, and
14 state your appearance if you're speaking on the record and
15 have not given it yet. All right.

16 If any parties are stating their appearance on the
17 record and speaking, please do so at this time.

18 All right. Please listen to the following
19 announcement. All persons are strictly prohibited from
20 making any recording of court proceedings, whether by video,
21 audio, screenshot, or otherwise. Violation of this
22 prohibition may result in the imposition of monetary and
23 non-monetary sanctions. The clerk of the court maintains an
24 audio recording of all proceedings which constitutes the
25 official record.

1 Parties must state their name each time they speak
2 on the court record. A party must join with a full first
3 and last name to be admitted from the waiting room. Parties
4 that join with initials, a partial name, a designation such
5 as iPhone, et cetera, will not be admitted.

6 All rise.

7 THE COURT: Please be seated. All right. Good
8 morning, everyone. Why don't we begin?

9 MS. JONES: Good morning, Your Honor. Elizabeth
10 Jones of Kirkland & Ellis on behalf of the debtors.

11 Your Honor, if I may just take a brief moment
12 before we jump into the agenda to give an update on
13 solicitation and some of the notices we recently filed?

14 THE COURT: Sure.

15 MS. JONES: Thank you. So Your Honor, our
16 solicitation process is well underway. We're about two
17 weeks out, and we're nearing almost a 10 percent return rate
18 on account holder ballots.

19 As a part of that process, we've received some
20 feedback from creditors that we're working through, one of
21 which is a notice we recently filed at Docket Number 3430
22 about Apple ID user issues, helping to address that for
23 those who haven't received their paper ballot yet. There's
24 a specific e-mail address if anyone else is having that
25 similar issue.

1 And then unfortunately, another phishing attack
2 that we filed to draw people's attention to at Docket Number
3 3422. This one is a little different. It's spoofing
4 Stretto's website asking people to give them information,
5 promising a distribution. We just want to make sure people
6 are aware of that, and appreciate all the creditors that
7 have flagged it for us so we can keep putting the notices
8 up.

9 THE COURT: You know, whenever these come up, I
10 hope you immediately contact the U.S. Trustee so they're
11 aware of it as well.

12 MS. JONES: Yes. Yeah. We make sure to spread
13 that as loud and far as we can.

14 THE COURT: Thank you.

15 MS. JONES: Okay. That's all I have, Your Honor.
16 With that, we'd like to move to the company status update.

17 THE COURT: Sure.

18 MS. JONES: Okay. Thank you.

19 Diana, can you give my colleague, Joshua Raphael,
20 screensharing?

21 CLERK: Yes. He is a co-host. He can
22 screenshare.

23 MS. JONES: Thank you.

24 THE COURT: Good morning, Mr. Ferraro.

25 MR. FERRARO: Good morning.

1 THE COURT: Go ahead.

2 MS. JONES: Mr. Ferraro --

3 MR. FERRARO: Can you hear me?

4 THE COURT: Yes, I can.

5 MR. FERRARO: Okay. Great.

6 MS. JONES: Good morning. Can you please give the
7 Court an update about the current status of the custody and
8 withhold withdrawal process?

9 MR. FERRARO: Yes, absolutely. Thank you,
10 Elizabeth, and good morning to everybody.

11 The company is continuing to proffer withdrawals
12 for eligible custody and account holders, and for users to
13 make additional deposits.

14 To date, we have completed 79.5 billion of
15 withdrawals, totaling approximately 90 percent of the
16 distributable value (indiscernible) with approximately 9
17 million remaining to be withdrawn.

18 In response to this slowing of withdrawals for
19 these account holders, we have continued our campaign of
20 weekly e-mail to eligible users to complete the
21 (indiscernible) and withdrawl. These actions have resulted
22 in an additional 3.5 million in value of withdrawals over
23 the last six weeks.

24 THE COURT: Mr. Ferraro, you're breaking up a
25 little bit, so I'm not sure whether it's the position of the

1 microphone.

2 MR. FERRARO: Sorry. Is that better or still the
3 same problem.

4 THE COURT: It's a little bit better. Go ahead.

5 MR. FERRARO: Okay. And I'm hearing a lot of
6 background noise, but -- yeah. It might be my device here.
7 Hopefully it'll improve.

8 Okay. So we've -- same problem?

9 THE COURT: Go ahead. We can hear you.

10 MR. FERRARO: I can always flip to my iPhone if
11 it's helpful.

12 We've got about 3.5 million in value in
13 withdrawals in the last six months -- or sorry, the last six
14 weeks as we've kind of continued our weekly e-mails, and we
15 plan to continue to these efforts to reduce the
16 (indiscernible).

17 Now turning to the next slide.

18 MS. JONES: Thank you. Mr. Ferraro, can you
19 please provide an update on the company's preparation for
20 asset distribution to retail and commercial customers if the
21 plan is confirmed?

22 MR. FERRARO: Yes. On or shortly after the
23 effective date, we will make an initial distribution of
24 approximately 2 billion in aggregate of (indiscernible)
25 based on the values used in the disclosure statement. The

1 distribution will be completed in a regulatory compliant
2 manner. The initial distribution will be subject to
3 applicable reserves and inclusive of the (indiscernible).

4 PayPal has been selected as the distribution agent
5 for individual non-corporate creditors in the United States,
6 excluding Hawaii. PayPal will not charge creditor fees for
7 claiming crypto or fiat from their platform as part of the
8 Chapter 11 plan distribution.

9 Creditors will need to pay (indiscernible) network
10 transaction fees for withdrawals to addresses -- external
11 addresses, but PayPal itself will not charge a withdrawal
12 fee.

13 THE COURT: Can you provide an estimate of what
14 those fees would be?

15 MR. FERRARO: Yeah. It's -- you know, the gas
16 fees are not very high right now, Your Honor, so it's
17 similar to what we did for the custody and withheld
18 withdrawals. You know, a few dollars, depending on the
19 coin, up to 15 percent.

20 THE COURT: Correct. That's why I thought it was
21 just important to get that on because the gas fees were
22 really quite modest, and it's important that the
23 distribution (indiscernible) that way. Go ahead.

24 MR. FERRARO: Yeah. That's right. PayPal has
25 been leaning in on this. I just want to again say no

1 transaction fees from PayPal for withdrawals to external
2 addresses, just gas fees.

3 Another piece of good news. Celsius and PayPal
4 worked together to define a process for creditors who wished
5 to withdraw more than 10,000 per week off the PayPal
6 platform, which is the current limit.

7 Celsius creditors with a crypto balance of 40,000
8 or more in the PayPal account who wish to increase this to
9 500 per week -- 500,000 per week will be asked to share
10 additional information about the wallet address, so this is
11 good news giving creditors up to 500,000 per week for
12 withdrawals if (indiscernible) enhanced diligence around the
13 withdrawals.

14 For all distributions that are not made by PayPal,
15 we are very close to naming a second distribution partner to
16 facilitate the withdrawals for international users and
17 certain corporate accounts.

18 If we do not identify a second distribution agent,
19 the Celsius platform is expected to remain open for 90 days
20 after the effective date to make the distributions on U.S.
21 creditors through the Celsius app, similar to the process
22 for custody and withhold users. After 90 days, those
23 creditors may receive fiat currency.

24 MS. JONES: Mr. Ferraro, can you please explain
25 why the 90 days was selected as the time period to leave the

1 Celsius app open if we have to go that route?

2 MR. FERRARO: Yeah. A 90-day period was selected
3 based upon our experience with the custody and withhold
4 account withdrawal. Our data showed the vast majority of
5 the withdrawals, approximately 90 percent was withdrawn
6 within the first 90 days.

7 Under the plan, custody account holders can
8 withdraw their income distributions as soon as the
9 confirmation date.

10 One last item. We had initiated the update of the
11 KYC data for about 200,000 of our non-U.S. users. So far,
12 about 25 percent of those users responded to our request and
13 completed the KYC (indiscernible).

14 We are encouraging users to complete the KYC in
15 advance of the effective date to streamline withdrawals and
16 avoid delays in distribution. For U.S. users, the KYC
17 process will be completed by PayPal.

18 MS. JONES: Thank you. Mr. Ferraro, can you now
19 please provide an update on the company's current mining
20 operations?

21 MR. FERRARO: Yes. Mining performance was strong
22 in July with rates deployed, (indiscernible) revenue,
23 margin, (indiscernible) EBITDA all increasing month over
24 month. We ended July with over 79,000 rates deployed, and
25 that increased in June. In August, we executed an agreement

1 with U.S. Bitcoin to host 85 (indiscernible) miners at their
2 alpha site and started deploying machines. We expect all
3 rates (indiscernible) by the end of September.

4 For July, we had an adjusted EBITDA of 2.7
5 million, an increase of 54 percent (indiscernible). The
6 increase was driven by power (indiscernible) sites during
7 economic curtailment as well as higher BTC prices.

8 Mining gross revenue was 11.2 million in July, up
9 19 percent from June, driven by a higher BTC price and
10 (indiscernible) time. In --

11 THE COURT: Can I ask you --

12 MR. FERRARO: Yeah.

13 THE COURT: I haven't checked Bitcoin prices in
14 the last week. I used to do it fairly regularly. What are
15 they currently?

16 MR. FERRARO: Last I checked was around 28.

17 MS. JONES: Yeah. I just checked this morning.
18 It's around -- I believe 26,000 for BTC.

19 THE COURT: Okay. Thank you very much. Go ahead.
20 Go ahead, Mr. Ferraro.

21 MR. FERRARO: In August, our proprietary power
22 strategy was effective as we faced higher energy prices in
23 Texas and lower BTC. We liquidated our forward
24 (indiscernible) power hedges for the first time in our
25 midland sites in August, and we realized a gain of over \$3

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1 million. You will see that in a higher EBITDA next month.

2 Moving to the next slide, which has the longer-
3 term trend, the metrics I just discussed. On the bottom
4 left graph, I'll point you to the 79,000 (indiscernible) at
5 the end of July. That's a steady increase since the Core
6 Scientific contract rejection in early January.

7 Additionally, you can see across the board, long-
8 term improvements in performance (indiscernible) margin,
9 adjusted EBITDA that BTC produced.

10 Now turning to the next slide.

11 MS. JONES: Thank you. Finally, Mr. Ferraro, can
12 you please give an update on the company's current financial
13 situation?

14 MR. FERRARO: Yeah. As a quick reminder, we
15 started the case with 138 (indiscernible). We had 139
16 million on hand as of July, month end, a \$1 million increase
17 since the petition date.

18 Thank you for the time, Your Honor, and sorry for
19 the audio problems.

20 MS. JONES: That's all for me, Your Honor. I cede
21 the lectern to my colleague.

22 THE COURT: Thank you very much, Mr. Ferraro.

23 MS. HENSLEY: Good morning, Your Honor. Gabriela
24 Hensley on behalf of the debtors.

25 THE COURT: Good morning.

1 MS. HENSLEY: The next item on the agenda is
2 actually Mr. Cole's motion. I'm not sure if he appeared
3 this morning or not.

4 THE COURT: Mr. Cole, have you appeared?

5 CLERK: He's on Zoom, Judge.

6 THE COURT: Okay. All right. Please go ahead
7 with your motion.

8 MR. COLE: Thank you, Your Honor. Good morning to
9 everyone.

10 First off, I do want to thank and applaud the
11 efforts of everyone involved in this sprawling and complex
12 case. I'm not a bankruptcy attorney, and I have no previous
13 experience in matters like this, so I can appreciate
14 everyone's efforts to move this along, get a plan enacted.

15 With that said, I'm not sure -- in my motion, I'm
16 claiming a secured creditor status, and I don't understand
17 how that has been ignored up until my motion, so --

18 THE COURT: Well, let me just say, Mr. Cole --

19 MR. COLE: Yes.

20 THE COURT: It hasn't -- it has not been ignored
21 because the Court ruled on it very early in the case. The--

22 MR. COLE: Well, I'm arguing, Your Honor, the
23 facts and circumstances --

24 THE COURT: Stop. Stop. I'm not disputing your
25 ability to raise these issues, and I do want to hear you.

1 But the Court issued a very lengthy ruling on this issue,
2 and what the debtor argues is that it's either law of the
3 case or persuasive on the issues you raised. But please go
4 ahead and argue.

5 MR. COLE: Thank you, Your Honor.

6 The unique facts of my case are that the debtor
7 initiated the series of events here where in conjunction
8 with the proposed April 14th, 2022 revised terms of use,
9 they informed me that unless I agreed to their adhesive
10 terms, that I will not be able to continue using their
11 services, will not be eligible to earn rewards on my
12 account, you know, thereby notifying me that I need to close
13 my account, withdraw my financial assets.

14 Up until the petition date, I made repeated and
15 documented efforts to effectuate this, and I never agreed to
16 the revised terms of use, and up until this very day, I've
17 not accessed or maintained my account in any sense. So you
18 know, with my prepetition efforts to exercise my contractual
19 call option and follow the debtor's notification that I need
20 to close my account and withdraw my financial assets, the
21 debtor has refused -- failed to act on my written demands
22 and to exercise this call option.

23 I believe that, you know, allowing me to close my
24 Earn account after direction, withdraw my financial assets,
25 falls under the ordinary course of business under the

1 uniform commercial code and -- excuse me -- under the
2 bankruptcy code.

3 Through the -- our course of conduct and
4 performance, I believe my Earn account holdings are
5 investment properties as defined under a securities account
6 based on definitions under the uniform commercial code.

7 Debtor represented and conducted itself as an
8 investment or securities exchange, broker, intermediary,
9 clearing agency, what-have-you, and I believe I maintain and
10 exercise the security entitlement through the call option
11 based on the terms and through the course of conduct in
12 which the debtor initiated the process where I was told I
13 need to withdraw the assets.

14 Security entitlement is defined under the code,
15 under the UCC as rights of property interests of an
16 entitlement holder with respect to financial assets. I
17 believe the debtor granted me a security entitlement through
18 the call option for the right to demand immediate complete
19 or partial repayment of any loan at any time.

20 And this is granted in the terms of use and
21 through the course of conduct by the debtor identifying my
22 withdrawable financial assets in my Earn account, and
23 through balance in my account, and through proof of funds
24 report that was generated and sent to me. And again through
25 the course of conduct where the debtor notified me that I

1 needed to close my account and withdraw my funds.

2 I don't believe the debtor can avoid my security
3 interests in my financial assets or investment property as I
4 prepetition perfected my secret interest under the uniform
5 commercial code 9-13 312(a) by properly filing financing
6 statements with the (indiscernible) Office of Delaware where
7 the debtor is -- was formed as a business, and also in
8 Florida where I am a resident.

9 The debtor was a willing participant in the
10 financial markets, and through this course of conduct
11 performance and operation as an investment or securities
12 (indiscernible). It has the duty of being central to the
13 uniform commercial code and to act as a custodian of my
14 financial assets and investment properties (indiscernible)
15 to my investment account.

16 It's my contention that debtor only held nominal
17 title to my financial assets based on the terms of use,
18 parties' course of conduct, and performance.

19 Under Article A of the uniform commercial code, a
20 securities (indiscernible) holds a financial asset for the
21 benefit of entitlement owners. Debtor granted me this
22 entitlement to the terms and course of conduct and notifying
23 me that I must close my Earn account and withdraw my
24 financial assets.

25 I believe I've acted diligently, Your Honor, in

1 response to debtor's refusal to close my account and
2 withdraw my financial assets in the normal course of
3 business. And in the interest of fairness, you know, my
4 secured claim should be recognized. And for the foregoing
5 reasons, I believe cause exists to recognize my security
6 interest and claims as an entitlement holder of financial
7 assets or investment property under the UCC. And the
8 debtor, Celsius, willingly chose to enter the financial
9 markets and participate in financial markets as a financial
10 or security (indiscernible), and they should be subject to
11 those provisions. And my secured claim, which I believe
12 should not be avoided.

13 THE COURT: Thank you very much, Mr. Cole.

14 MR. COLE: Thank you.

15 THE COURT: Ms. Hensley, are you going to argue?

16 MS. HENSLEY: Yes, Your Honor.

17 THE COURT: Please go ahead.

18 MS. HENSLEY: Your Honor, the point about the
19 terms of use, this is just a variation of the argument Mr.
20 Frishberg made regarding his request to close his account.
21 All of the records that were seen with respect to Mr. Cole's
22 account suggest that he tried to close his account only
23 after the pause, which would be, you know, like many
24 creditors seeking to withdraw their funds off of the
25 platform.

1 Separately, there's a lot of discussion in Mr.
2 Cole's motion about not accepting the April 14th, 2022 terms
3 of use, and that changing the nature of the relationship.

4 Your Honor's Earn opinion found definitively that
5 anything Version 5 or after made the ownership of the assets
6 in the accounts on the platform Celsius's property, and the
7 -- we can avoid getting into the technical arguments about
8 the UCC because in order to perfect an interest, you must
9 have an interest to perfect.

10 So under the facts, you know, we sat and looked
11 carefully, and we do not believe that there is a basis to
12 distinguish the facts of Mr. Cole's case from the facts of
13 Mr. Frishberg's case or Ms. Barstow's case who filed a
14 similar motion back in November, which was --

15 THE COURT: Mr. Frishberg's action, that was the
16 first written opinion I actually issued in the case was
17 denying his motion to lift the stay to permit him to proceed
18 to recover. And then in the Earn opinion, as you've
19 referenced, I in fact traced the various changes in the term
20 of use in -- from Version 5 through Version 8. I believe it
21 was clear that the deposited -- crypto-deposited Earn
22 accounts were property of the debtor, then became property
23 of the estate.

24 MS. HENSLEY: Yes, Your Honor. And so on that
25 basis, we don't -- we don't see a basis to distinguish Mr.

1 Cole's case from those precedents and believe that the
2 underlying reasoning for those opinions regarding fairness
3 and a collective process, all of that, and the arguments
4 we've made throughout the case about the stay with the risk
5 of opening the floodgates right before we're about to make
6 equitable distributions under a plan, you know, provided
7 that it's confirmed, we do not feel it would be appropriate
8 to lift the stay to allow Mr. Cole access to these funds.

9 THE COURT: All right. I'm going to take the
10 matter under submission.

11 Mr. Cole, thank you very much for your argument,
12 and I'll try to get a decision out reasonably promptly.

13 MR. COLE: Thank you, Your Honor.

14 THE COURT: Ms. Hensley?

15 MS. HENSLEY: Your Honor, next on the agenda,
16 we're switching to the uncontested section of the agenda.

17 At Docket Number 3357, we filed a fourth motion to
18 extend our exclusive period to solicit our plan. Your
19 Honor, we -- as you're aware from the update earlier today,
20 we have commenced solicitation. It is going well.
21 Delighted that this is an uncontested motion. That's a
22 first for us in this case.

23 We've sought a 62-day extension to November 30th
24 because presently the solicitation exclusivity period is set
25 to expire just a few days shy of the start of our

1 confirmation hearing, and we would very much like to keep
2 these cases on the progressive track they're on by
3 maintaining exclusivity.

4 THE COURT: There's a long time to get there. It
5 is an uncontested motion. Even if it was contested, I would
6 grant -- the motion is granted.

7 MS. HENSLEY: Thank you, Your Honor.

8 THE COURT: Submit the order in Word format, and
9 it will be entered.

10 MS. HENSLEY: Yes, Your Honor. Gladly. I will
11 cede the lectern to my colleague.

12 THE COURT: Thank you.

13 MS. LOUREIRO: Good morning, Your Honor. For the
14 record, Patricia Loureiro from Kirkland & Ellis on behalf of
15 the debtors.

16 Next on the agenda is the debtor's motion seeking
17 authority to enter into a settlement agreement with a former
18 employee.

19 Before we get into the substance, Mr. Ferraro
20 submitted a declaration in support of the motion which was
21 filed at Docket Number 3373, and we'd ask that that be
22 introduced into evidence.

23 THE COURT: Any objections? All right. The
24 declaration is submitted in -- is admitted in evidence.
25 Please go ahead.

1 (Declaration entered into evidence)

2 MS. LOUREIRO: Thank you, Your Honor. As a bit of
3 background, nearly two years ago Mr. Condit was separated
4 from his employer, Debtor Celsius Network LLC. A few months
5 later, just before the petition date, Mr. Condit commenced
6 an action, a civil action, in the Southern District of New
7 York alleging among other things discrimination under the
8 ADA.

9 After the petition date, Mr. Condit filed a motion
10 seeking relief from the automatic stay to continue the civil
11 action arguing the Debtors' liability insurance would cover
12 the cost of the Debtors' defense. In order to resolve this
13 motion, the Debtors and Mr. Condit entered it into a
14 stipulation agreeing the civil action could continue but
15 that his recovery would be limited to solely proceeds
16 available from the employment practices policies.

17 Notably Crum & Forster, the insurer providing the
18 employment practices policies, was not a party to the
19 stipulation. The civil action continued this spring and was
20 recommended to mediation. After a one day mediation session
21 in June, the parties agreed to a settlement in principle
22 which is reflected in the settlement agreement attached as
23 Exhibit 1 to the proposed order. The settlement agreement
24 contemplates a total payment of \$230,000 to Mr. Condit in
25 exchange for his agreement to withdraw the claim and to

1 release all claims against the Debtor.

2 In exchange for the insurer's cooperation during
3 the settlement negotiations, in exchange for their agreement
4 to release their claim for \$150,000 self-retention payment,
5 the Debtors agreed to provide \$50,000 of this payment
6 directly from the Debtors' estates in an exercise of their
7 business judgment. The settlement in principle was approved
8 by the mediator and entry into the settlement agreement has
9 been approved by the counsel to the Committee.

10 So given the risk and uncertainty associated with
11 fully litigating this claim, the Debtors in an exercise of
12 their business judgment believe the settlement is fair and
13 equitable and in the best interest of the estates.

14 THE COURT: Anything from the Committee?

15 MR. PESCE: Thank you, Your Honor. For the
16 record, Gregory Pesce, White & Case --

17 THE COURT: Long time since I've seen.

18 MR. PESCE: I know. Good to see you, Judge.

19 THE COURT: -- or on the screen.

20 MR. PESCE: The Debtor cooperated with the
21 Committee in reviewing this matter over several weeks and
22 involved us with it. We have no objection to the
23 settlement.

24 THE COURT: Thank you. Does anybody else wish to
25 be heard? All right, it's approved. Just submit the order

1 in Word format. It'll be entered.

2 MS. LOUREIRO: Thank you, Your Honor. Next on the
3 agenda I think is the fee examiner's fee application.

4 THE COURT: Okay.

5 MR. SONTCHI: Good morning, Your Honor.

6 Christopher Sontchi, the fee examiner. We're here both on
7 Godfrey Kahn's second interim fee application as well as my
8 own second interim fee application. I also have an update
9 on the Latham situation if you wish to hear it, where it was
10 presented yesterday, I believe.

11 THE COURT: Yeah, I do. Please go ahead, just
12 briefly address that if you would.

13 MR. SONTCHI: Sure. So as Your Honor remembers at
14 the last hearing that I participated in, we discussed issues
15 with regard to Latham's work on behalf of the Debtors as
16 special counsel with the Southern District of New York U.S.
17 Attorney. Some concerns had been raised that we were made
18 aware of and in order to ensure that they would only be paid
19 out of the estate for activities that benefited the estate,
20 I endeavored to have a meeting with Latham with my counsel
21 in person in New York.

22 We had the entire Latham team that worked on the
23 matter substantively as well as two bankruptcy lawyers from
24 Latham with whom you're very familiar, Mr. George Davis and
25 Ms. Suzanne Uhland. We had a lengthy meeting. We heard

1 their side of the story. We had a vigorous discussion and
2 at the end of the day, in order to resolve the fee
3 application, they agreed to what is really a very, I think,
4 substantial reduction in their fees.

5 About a third of their fees dealt with the
6 Southern District of New York and there was a cut of 12.5
7 percent in those fees. In addition, the other two-thirds
8 were reduced by 5 percent because we have had issues with
9 their fee applications since day one.

10 It was a very -- I think it was a very good result
11 in connection with -- and a very professional negotiation
12 and we ran before we submitted it to the Court, we ran it by
13 the Debtor, we ran it by the Committee and neither of them
14 had an rejection with that fee settlement that was then
15 baked into to the fee application that was actually put
16 forward to the Court.

17 THE COURT: All right. Does anybody else want to
18 hear -- anybody want to speak to the issue of the Latham
19 fees? It's approved.

20 MR. SONTCHI: Okay.

21 THE COURT: Thank you very much.

22 MR. SONTCHI: I -- you're welcome. I believe the
23 order was presented yesterday, so I'm not as familiar with
24 your procedures as I was with my old procedures, so
25 hopefully it's working its way through the system.

1 THE COURT: It's working its way through the
2 system.

3 MR. SONTCHI: Very good. And with regard to
4 Godfrey Kahn and my own fees, we've received no objection or
5 comments from any party in interests and those are available
6 to be approved by the -- we got the math right this time,
7 Your Honor. We only checked it about 100 times to make sure
8 we didn't make that same mistake. So, if you -- unless you
9 have any questions, it's ready to be approved.

10 THE COURT: All right. With respect to the
11 Godfrey & Kahn, application, they are counsel to the fee
12 examiner, they seek fees in the amount of \$563,639 and
13 expenses in the amount of \$643.51 for the period from March
14 1, 2023 to June 30th, 2023. And during that period, Godfrey
15 did 958.8 hours of work. The application is approved. The
16 Godfrey application includes very thorough detailed time
17 records that make me quite comfortable that the work done
18 was necessary and performed in a reasonable amount of time.
19 The application includes the required certification and
20 breaks down hours in project billing format. Godfrey billed
21 39.3 hours or \$24,604 for preparing the fee application
22 which is within what I refer to as the Mesa guidelines on
23 the amount of time spent on preparing fee applications.
24 It's from a prior decision of mine in Mesa Air Group, where
25 I've said fees for preparing a fee application ordinarily

1 should be in the range of 3 to 5 percent. These are 4
2 percent. So the -- those -- the guidelines were satisfied.
3 So the Godfrey & Kahn application is approved.

4 With respect to the second fee application of
5 Delaware ADR LLC and Sontchi LLC, the -- it seeks fees and
6 the amount of \$57,150 and no expenses. It's approved as
7 well. You know, Mr. Sontchi, in the Southern District of
8 New York, we follow the U.S. Trustee's project billing
9 format. If you or Godfrey & Kahn are not familiar with it,
10 they ought to look at it. It would be helpful and make it -
11 - life easier for my chambers and I if the matters were
12 reported in the project billing format that was included,
13 but for the purposes of this application, I consider --

14 MR. SONTCHI: I will.

15 THE COURT: The -- it is quite clear and all of
16 the time was appropriately spent and I'm pleased to be able
17 to approve it.

18 MR. SONTCHI: Well, we will certainly. Thank you,
19 Your Honor, very much and we'll certainly address that going
20 forward and I apologize.

21 THE COURT: That's --

22 MR. SONTCHI: Also, I don't -- just, I don't know
23 if you were confused by the switch. I switched firms in --
24 at the end of May from Delaware ADR LLC to my own, to my own
25 solo firm, so that's why the -- there's a bit of an alphabet

1 soup in connection with these applications. So I apologize
2 for that.

3 THE COURT: It's hard to keep track of all your
4 hats, Judge Sontchi, in Singapore.

5 MR. SONTCHI: Well, that's where I am right now,
6 Your Honor. It's 10 o'clock -- 10:30 at night. Thank you
7 very much.

8 THE COURT: Thank you. Say hello to my friends in
9 Singapore.

10 MR. SONTCHI: I certainly will. I'll see them
11 tomorrow.

12 THE COURT: All right. All right, let's move on
13 on the agenda.

14 MS. LOUREIRO: Your Honor, the last item on the
15 agenda is the Celsius v. StakeHound adversary --

16 THE COURT: Right.

17 MS. LOUREIRO: -- proceeding.

18 THE COURT: Okay. Why don't counsel in the
19 Celsius v. StakeHound Adversary Proceeding 23-01138, please
20 come on up.

21 MS. WICKOUSKI: Good morning.

22 THE COURT: Ms. Wickouski, nice to see you.

23 MS. WICKOUSKI: Thank you. Stephanie Wickouski,
24 for the record, on behalf of StakeHound and I'm here with my
25 colleague Jeffrey Kramer also from Locke Lord.

1 THE COURT: Thank you very much.

2 MR. HURLEY: Good afternoon, Your Honor. Mitch
3 Hurley with Akin Gump on behalf of Celsius.

4 THE COURT: All right, thank you. I realize that
5 you're awaiting my decision on the TRO. I expect to
6 hopefully have that resolved by tomorrow. But in any event,
7 we have a preliminary -- one way or the other, we have a
8 preliminary injunction hearing coming up and also miss --
9 StakeHound's motion to dismiss for lack of personal
10 jurisdiction and their motion to compel arbitration.

11 So I thought we ought to have -- I want to have
12 you here today just as an update on preparation for that
13 hearing, which will be a hybrid hearing. I guess it was
14 September 27th, I think is the date and it's become
15 necessary for me to sort of change the procedures of the
16 Court with respect to hybrid hearings because the September
17 27th preliminary injunction hearing will be an evidentiary
18 hearing.

19 And while the precise language of the guidance
20 from the Administrative Office of the Courts and the
21 Judicial Conference of the United States has not been
22 released yet, after September 21st, we can no longer have
23 remote hearings with non parties in interest or their
24 lawyers appearing on Zoom. Any -- the press or others can
25 certainly come to the courthouse and observe from here, but

1 they won't be able to listen and watch the hearing remotely
2 on Zoom.

3 So we've included language in the order that
4 scheduled that hearing as to what those procedures are. We
5 hope to have further guidance and clarity from the
6 administrative office shortly, but I believe that -- those
7 are the rules that will apply.

8 What was unclear to me is how many witnesses each
9 of you expect to call and tell me about, can you give me an
10 estimate of the volume of exhibits and when you'll be
11 prepared to -- go first, Mr. Hurley. You're representing
12 Celsius Network as the plaintiff in that.

13 MR. HURLEY: Thank you, Your Honor. So maybe can
14 I give Your Honor some background on our discussions about a
15 potential schedule?

16 THE COURT: Sure.

17 MR. HURLEY: We can kind of fill in some of those
18 --

19 THE COURT: Yeah, please, so ahead. That would be
20 helpful.

21 MR. HURLEY: So, just as a reminder, there are
22 papers that are due this Friday, opposition briefs. We have
23 replies due the following Friday.

24 Celsius served what we intend to be very targeted
25 document requests on September 4th and we have been

1 discussing a schedule with StakeHound's counsel about
2 discovery responses and how we proceed from here. So I
3 don't think we have a final agreement, but I'm just going to
4 tell you what we've talked about tentatively because I think
5 we're quite close to an agreement.

6 THE COURT: Let me just ask, since you don't have
7 a final agreement, Ms. Wickouski, do you have any objection
8 to Mr. Hurley describing that? You'll certainly have your
9 chance to respond to that.

10 MS. WICKOUSKI: Thank you, Your Honor. I have no
11 objection, and it is correct, we have been discussing a
12 schedule and I think we're very close but --

13 THE COURT: Okay. Go ahead, Mr. Hurley.

14 MR. HURLEY: So what we have proposed was that the
15 responses to our September 4th document requests -- so the
16 responses are due on Monday. We are hoping that we'll have
17 an opportunity to meet and confer with StakeHound even in
18 advance of that, because we do want to make sure we keep
19 this streamlined. It's short schedule.

20 The proposal would be that the document production
21 would be completed by September 15th. We would exchange
22 witness lists on September 18th, which would be both after
23 completion of the document discovery and after the replies
24 are submitted, and that would be at 12 p.m. Eastern on that
25 day. We have served a notice for a deposition of Mr.

1 Castellana. I understand there are going to be some notices
2 served by StakeHound, too, that haven't been yet, so we're
3 going to have to work that out. We've been talking about
4 what dates would work for his deposition. He has some
5 things on his schedule we got to try to work around.

6 So that's still sort of up in the air, but what
7 we're hoping is that all depositions can be completed by
8 September 24th, which is a Sunday. We would then propose
9 that we exchange exhibit lists and depo designations also on
10 that day, on Sunday by noon, objections the next day at
11 noon, meet and confer to try to resolve them on the 26th,
12 which of course is the day before the hearing.

13 That's what we've been talking about so far, but
14 obviously, any guidance from Your Honor would be extremely
15 welcome if there are changes you'd like us to consider.

16 THE COURT: Let me hear from Ms. Wickouski. Then
17 we can talk a little bit more about it.

18 MS. WICKOUSKI: Thank you, Your Honor. That's --
19 as Mr. Hurley described it is exactly what's been proposed
20 and what we've been discussing. A few of the dates, we need
21 some accommodation on so -- particularly the earlier dates,
22 so we're still discussing that, but that is, you know,
23 generally along the lines we're discussing. And we also
24 intend to serve requests for production of documents. We
25 hope to get that out hopefully tomorrow.

1 THE COURT: Sooner the better.

2 MS. WICKOUSKI: Yes. Yes, Your Honor. And
3 there's one other matter that we have been discussing, we
4 don't have an agreement on, but it's something that is
5 ultimately up to Your Honor and that is the issue of what's
6 set on the 27th includes our motion to dismiss for lack of
7 personal jurisdiction.

8 It's always been our view that we filed that as a
9 protective measure and that we don't particularly feel that
10 the Court needs to address that. It does -- the fact that
11 it is set does affect our discovery because discovery served
12 on us, a substantial portion of it does relate to personal
13 jurisdiction and it really adds to the burden, if you will,
14 of what we're trying to produce and respond to.

15 If that were going to be deferred, as we would be
16 amenable to, that would cut down some of the discovery
17 involved. But I recognize that that's the way Your Honor --

18 THE COURT: Well, let me raise this, a couple of
19 questions. I've commented at the separate hearings we've
20 had in the adversary proceeding with that ruling you, you
21 reserve your rights to object to personal jurisdiction as
22 you certainly could. And I think what I commented in an
23 order, in fact, was that just reviewing the four corners of
24 the complaint that Celsius filed, it appeared to me that
25 Celsius established a *prima facie* basis for personal

1 jurisdiction over StakeHound. That wasn't a ruling on it.
2 That was just looking at the complaint.

3 All right. You've contested the issue of personal
4 jurisdiction. Absent personal jurisdiction, I can't issue
5 a, you know, a preliminary injunction. If -- it certainly --
6 -- let me put it this way. Certainly very unclear whether a
7 TRO or a preliminary injunction is an issue, but let's
8 assume that one, the Court would be inclined to grant it.

9 I'm certainly prepared to do so with the express
10 understanding that you reserve your rights with respect to
11 the personal jurisdiction, if you want to deal with that at
12 a later point. What I -- you're certainly within your
13 rights to press the personal jurisdiction issue at that same
14 hearing. So, in a sense, I suppose I'm putting the ball in
15 your court.

16 I think we -- I may have commented previously that
17 I view Second Circuit law, both the circuit decisions,
18 District Court decisions and I think some Bankruptcy Court
19 decisions as leaving flexibility in a District or Bankruptcy
20 Court in how it addresses a personal jurisdiction issue.

21 And again, I'm not trying to rule on it at this
22 point, but the way I read the cases generally, I can decide
23 not on a final basis but certainly on an interim basis that
24 without hearing contested evidence on personal jurisdiction,
25 I'm satisfied that there's a *prima facie* basis to assert it.

1 I don't know whether that makes sense to you.

2 So I'm certainly prepared to see this hearing on
3 the 27th streamlined and if it would streamline the
4 discovery, that would be, I think, helpful to everybody and
5 perhaps the number of witnesses that I have to listen to on
6 the 27th. I think, you know, this is a -- there are some
7 unique issues.

8 You have your motion to compel arbitration in
9 Switzerland and so I at least have to have a *prima facie*
10 basis for concluding I have personal jurisdiction to rule on
11 the preliminary injunction, to rule on the motion to compel
12 arbitration.

13 If I compel -- if I grant your motion to compel
14 arbitration, you may -- I mean, if I grant the preliminary
15 injunction and I think I said in a prior order, again, I'm
16 not deciding it now -- and I would certainly listen to
17 everybody about it -- there would be the issue in my mind as
18 to whether I granted a preliminary injunction until -- if I
19 also compelled arbitration until the arbitrator who was
20 selected decided whether to provide some provisional relief
21 in the form of essentially the form of the freezing
22 injunction that the Debtor has sought.

23 I'm not deciding that now, but I've certainly
24 indicated to both sides that that was a potential issue. So
25 I -- you know, the ball's in your court, let me put it that

1 way.

2 MS. WICKOUSKI: Thank you, Your Honor. So --

3 THE COURT: The only thing I would say is I would
4 certainly -- would not believe you have waived the prelim --
5 the personal jurisdiction issue if we go forward with the
6 hearing without resolving that issue.

7 MS. WICKOUSKI: Thank you, Your Honor. That was
8 precisely the kind of guidance that we were looking for here
9 because -- and forgive me for waxing maybe inelegantly -- in
10 eloquently at the moment, but --

11 THE COURT: Your briefs have been very elegant --
12 eloquent.

13 MS. WICKOUSKI: Thank you, Your Honor. You know,
14 one of the --

15 THE COURT: So has Mr. Hurley's.

16 MS. WICKOUSKI: One of the struggles in
17 bankruptcy, is that, you know, you have a traditional view
18 of the world where issues have to be addressed in order and
19 jurisdiction first. And, you know, there's threshold issues
20 before you got substantive issues, but often in bankruptcy,
21 there's a need to transpose those, and the way to get around
22 it, I guess is, exactly as Your Honor stated that the Court
23 can make a preliminary determination for purposes of the
24 substantive issue, reserving the party's rights to go out of
25 order.

1 And that is precisely what we were hopeful of
2 doing because it does streamline the procedure.

3 THE COURT: It's funny, I read the decisions on
4 challenges to personal jurisdiction as essentially leaving
5 that path open because a Court can decide, as I understand
6 it, at least, based on the four corners of a complaint, has
7 it set forth a *prima facie* basis for the exercise of
8 personal jurisdiction, which I believe this complaint does,
9 but it's a complaint, not evidence and so at least -- I'll
10 listen to Mr. Hurley at this point, but certainly I'm
11 prepared to go forward, deferring the -- a challenge to
12 personal jurisdiction without your client waiving its rights
13 in following that route. But maybe Mr. Hurley wants to
14 address this as well.

15 MS. WICKOUSKI: Thank you, Your Honor.

16 THE COURT: Okay, thank you.

17 MR. HURLEY: Thank you, Your Honor. Obviously,
18 the most important thing from Celsius' perspective is that
19 the Court has sufficient power to enter relief that we think
20 is appropriate at this time, includes with respect to the --
21 with the motion for preliminary injunction, but it also
22 includes relief that we may soon be seeking with respect to
23 the stay violation.

24 In that regard -- and I just want to make this
25 clear for the record, in terms of what the consequences of

1 that violation are with respect to the proceeding that they
2 started and that we would argue is void, I think that is yet
3 to be fully determined and you know, if there were an order
4 with respect to arbitration that resulted in some further
5 proceedings, we at least don't concede that that particular
6 proceeding is one that would be appropriate. We think it's
7 already void.

8 In terms of the, whether personal jurisdiction is
9 decided at the hearing, I will just say this. We have not
10 yet had a chance to meet and confer at all about the
11 discovery we've sought. I don't think the discovery that
12 we're seeking on that front actually is going to be
13 particularly burdensome. I frankly don't think there are
14 going to be particularly significant disputed issues of fact
15 to be determined for Your Honor to decide the personal
16 jurisdiction issue.

17 So our view had been that issue is going to be
18 briefed. Let's get it off the table and move forward with
19 the case. But again, the most important thing from Celsius'
20 perspective is that the Court is satisfied it has the
21 authority to enter the relief that we think is appropriate.

22 THE COURT: Well, unless and until the Court -- I
23 do believe, as I've said multiple times, that I think you
24 took some care in the complaint to allege facts sufficient
25 to establish personal jurisdiction over StakeHound. I mean,

1 I note that the contract between Celsius was between Celsius
2 in the UK and a Swiss entity. It was not between, you know,
3 Celsius Network Limited LLC, the U.S. entity.

4 That's just -- in terms of the face of the
5 contract, but I think you certainly, I think, were mindful
6 of the issues surrounding personal jurisdiction and alleged
7 facts from which the Court could conclude you haven't
8 established a *prima facie* basis for personal jurisdiction.

9 That's not an ultimate decision. Okay. Maybe I'm
10 wrong about this, but at least I read the law and I've had
11 these issues before that the Court has discretion about how
12 it's going to treat this issue of personal jurisdiction.
13 And if we go forward on the 27th without the specific
14 factual challenge to personal jurisdiction, I will presume
15 the existence of personal jurisdiction without finally
16 determining that issue. So Ms. Wickouski will not have
17 waived her ability to challenge that issue at a subsequent
18 time.

19 You know, I have commented before that it
20 certainly appears to me that StakeHound violated the
21 automatic stay in demanding -- in filing its arbitration
22 demand in Switzerland. I don't approach these issues with
23 the clean slate either. I pointed out the MF Global series
24 of decisions that have dealt with it.

25 I don't think that my decisions demand, require

1 that I essentially void everything that may have happened so
2 far in triggering the -- I'm not deciding this issue, okay.
3 You know, a single arbitrator has been selected. The
4 contract has an arbitration clause. You don't dispute that.
5 Arbitration in Switzerland. An arbitrator has been
6 selected.

7 I've made it clear that an order has been entered
8 that no further action is to take place in that arbitration
9 pending further order of this Court. I don't rule out the
10 possibility that I can -- that I conclude that the disputes
11 between StakeHound and Celsius should be arbitrated in
12 Switzerland, pursuant to the arbitration clause. I'm not
13 saying I am or I'm not. So one shouldn't assume that even
14 if I conclude that StakeHound violated the automatic stay,
15 that I don't permit the arbitration to go forward in
16 Switzerland rather than simply striking the demand, making
17 them start all over again.

18 I think it's important for Celsius and StakeHound
19 that issues, if they're arbitrable, should be resolved
20 expeditiously. And I don't think it -- you may disagree
21 with this. I don't think it's in Celsius' interest to
22 prolong a decision, whether it's a Court or an arbitrator,
23 on the underlying merits of the issues.

24 MR. HURLEY: Understood completely, Your Honor.
25 Really, that was in the nature of just making clear, we're

1 reserving our rights in terms of what the consequences could
2 be, not suggesting a decision needs to be made now.

3 THE COURT: Okay.

4 MR. HURLEY: In that same vein, Your Honor, just
5 because you mentioned it, I want to make crystal clear,
6 Celsius does not concede that all of these three tranches
7 are subject to an arbitration agreement. Okay? You have
8 the SSA that related to the 25,000, November ETH. You have
9 RSA that relates to the MATIC and the DOT. There is no
10 evidence that has been provided so far of an arbitration
11 agreement with respect to the 35,000 ETH that was lost.

12 THE COURT: Okay.

13 MR. HURLEY: So I just want to make crystal clear,
14 that is going to be a part of what we argue, that there is
15 no agreement --

16 THE COURT: That's --

17 MR. HURLEY: Yeah.

18 THE COURT: I just -- did you want to say
19 something else, Ms. Wickouski?

20 MS. WICKOUSKI: No. I think it probably goes
21 without saying that I disagree with what Mr. Hurley just
22 said and --

23 THE COURT: Surprise.

24 MS. WICKOUSKI: We're actually planning to address
25 that specific --

1 THE COURT: Let me -- one last comment. This is
2 probably useless. But could you try and settle this?

3 MS. WICKOUSKI: Yes, Your Honor. Certainly. I
4 will try.

5 THE COURT: I mean that quite -- I say it with a
6 smile, but I mean it quite seriously. It's in both
7 StakeHound and Celsius' interest to try and resolve this.
8 The best settlements are ones that neither side is entirely
9 happy with, but considering all the risks involved, the
10 parties conclude that settlement is in the best interests of
11 the parties. And when a settlement is presented to the
12 Court by sophisticated counsel in a well litigated matter,
13 is usually pretty persuasive in getting approval.

14 MS. WICKOUSKI: Thank you, Your Honor and I take
15 that very seriously and I take trying to settle things as
16 part of my role.

17 THE COURT: Thank you. Okay. All right. What's
18 next on the agenda? I -- update on maybe some adjourned
19 matters?

20 MS. JONES: MS. LOUREIRO: Yes, there -- we've
21 nothing --

22 THE COURT: Just identify yourself --

23 MS. JONES: Oh, sorry, Your Honor. Elizabeth
24 Jones, Kirkland & Ellis, on behalf of the Debtor. There's
25 nothing further from us, as you see --

1 THE COURT: Has the Willis Towers Watson matter
2 been resolved?

3 MS. JONES: There are discussions with the U.S.
4 Trustee and counsel to Willis Towers. I think we're very,
5 very close which is why we adjourned it at this hearing.

6 THE COURT: Okay. All right. Thank you. All
7 right.

8 MS. WICKOUSKI: Excuse me, Your Honor, but when --

9 THE COURT: Just go ahead --

10 MS. WICKOUSKI: -- become --

11 THE COURT: -- identify yourself for the record.

12 MS. WICKOUSKI: Oh, apologies. Stephanie
13 Wickouski, for the record, counsel for StakeHound. Your
14 Honor, may we be dismissed?

15 THE COURT: Yes, you are. Hopefully, we're all
16 going to be dismissed pretty soon.

17 MAN: Thank you, Your Honor.

18 THE COURT: You are. Thank you very much. Okay.
19 All right. But so that -- I take it, Ms. Jones,
20 (indiscernible) for the motion for disgorgement of fees by
21 the U.S. Trustee as well?

22 MS. JONES: Yes. Yes, Your Honor. And again,
23 Elizabeth Jones of Kirkland & Ellis on behalf of the Debtor.
24 They will all be addressed together.

25 THE COURT: Okay. So on the adjourned matters is

1 also the Lawson subpoena. Has that been resolved?

2 MS. JONES: Your Honor if I can, my colleague, Mr.
3 Latona can probably speak --

4 THE COURT: Sure. Thanks. Thanks very much.

5 MS. JONES: Thank you.

6 THE COURT: Mr. Latona, nice to see you.

7 MR. LATONA: Good morning, Your Honor. Nice to
8 see you, too. For the record, Dan Latona of Kirkland &
9 Ellis on behalf of the Debtors.

10 In response to the Debtors' 2004 motion, the
11 Debtors did conduct a deposition of one of Mawson's
12 corporate representatives last weekend. As part of the
13 ongoing discovery, we have agreed to adjourn the Rule 60(b)
14 motion to the October 5th hearing to allow that process to
15 play out.

16 THE COURT: Okay. Thank you very much.

17 MR. LATONA: Thank you, Your Honor.

18 THE COURT: I guess that's it. All right. Does
19 anybody have anything else they want to raise? We're
20 adjourned. Thank you very much.

21 (Whereupon these proceedings were concluded at
22 10:57 AM)

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1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

5

6 *Sonya M. Ledanski Hyde*

7 Sonya Ledanski Hyde

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20 Veritext Legal Solutions

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22 Suite 300

23 Mineola, NY 11501

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25 Date: September 9, 2023

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[attorney - ca]

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